

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

BIG CAT RESCUE CORP., a )  
Florida not-for-profit )  
corporation, )  
Plaintiff, )  
 )  
-vs- ) Case No. FJ-13-01-F  
 )  
BIG CAT RESCUE )  
ENTERTAINMENT GROUP, INC., )  
et al., )  
 )  
Defendants. )

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE SHON T. ERWIN

TUESDAY, AUGUST 4, 2015; 2:00 p.m.

OKLAHOMA CITY, OKLAHOMA

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Proceedings recorded by mechanical stenography, transcript  
produced by computer.

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1 (Proceedings had on August 4, 2015.)

2 THE COURT: Counsel, let's do this. Let me just  
3 meet with counsel in the back room. Let's have a pre-hearing.

4 (Court has in-camera conference with counsel.)

5 THE COURT: Please be seated.

6 This is Case Number FJ-13-01, District Judge Friot's  
7 case. Let's just call it Big Cat Rescue Corp versus, among  
8 other parties, Joe Schreibvogel, also known as Joe Exotic.

9 We're here on plaintiff's motion seeking to hold  
10 Mr. Schreibvogel in contempt of court for failure to obey a  
11 court order. That's ECF number 100.

12 Counsel, if you'll announce your appearances and also  
13 introduce witnesses you expect to call, beginning with the  
14 plaintiff.

15 MS. HINTZ: I'm Heather Hintz for the plaintiff, Big  
16 Cat Rescue Corp, here with Mel McVay, co-counsel, and Jason  
17 Kreth, also counsel for plaintiff, who will be our witness.  
18 Potentially I will need to testify as well. I'm just not sure  
19 how that will go.

20 THE COURT: Okay. For Mr. Schreibvogel.

21 MR. DAVIS: John Davis for the defendant Joe Exotic.  
22 The witness will be Ryan Duffy, who is not a counsel in this  
23 case but counsel in a companion case.

24 THE COURT: All right. As to the whereabouts of Joe  
25 Exotic, Mr. Davis, can you comment on that?

1 MR. DAVIS: Yes, Your Honor. He is in Iowa. He was  
2 out of town on business, could not attend.

3 The subject matter at hand can best be handled by my  
4 witness, Mr. Duffy, as opposed to Joe Exotic, as far as --

5 THE COURT: Certainly Mr. Exotic was aware of the  
6 date and time and place of the hearing?

7 MR. DAVIS: Yes, Your Honor.

8 THE COURT: Okay. Opening statement from the  
9 plaintiff.

10 MS. HINTZ: Your Honor, would you like us to use the  
11 podium?

12 THE COURT: Please.

13 MS. HINTZ: I'm Heather Hintz with Mel McVay as we  
14 indicated. We're here on behalf of the plaintiff, Big Cat  
15 Rescue Corp, seeking a determination that Defendant Joe  
16 Schreibvogel is in civil contempt for failing to comply with  
17 the Court's order, docket number 99 in this case.

18 The order directed him to turn over a Great Dane trailer  
19 to plaintiff by June 19th. In that regard the Court also  
20 ordered him to appear today to show cause why he should not be  
21 held in contempt. It's our understanding he's not here. He's  
22 in Iowa at a state fair.

23 The genesis of the motion for turnover was, our client  
24 had a -- three judgments in Florida that totaled over a  
25 million dollars. They were domesticated in Oklahoma in this

1 Court as FJ-1, FJ-2, and FJ-3 in 2013. So all the activity  
2 has pretty much taken place here in the FJ-1 case, which was a  
3 \$953,000 judgment in favor of Big Cat Rescue and against  
4 Mr. Schreibvogel and two other entities.

5 We moved on behalf of Big Cat Rescue for a hearing on  
6 assets. The Court granted that hearing, and it was held here  
7 in this courtroom on March 6th.

8 In the course of that testimony Mr. Schreibvogel  
9 identified, among other things, a Great Dane trailer that he  
10 owned personally free and clear of any liens, but he said he  
11 had loaned it to his friend Mr. Taranova, who lived in  
12 Kaufman, Texas, and --

13 THE COURT: Kaufman, Texas?

14 MS. HINTZ: Kaufman, K-A-U-F-M-A-N.

15 Our understanding is that's, I think, southwest of Dallas  
16 maybe 20 or 30 miles. So essentially a Dallas suburb,  
17 Dallas/Fort Worth suburb.

18 We consequently moved the Court for -- under Oklahoma  
19 statute, Title 12 Section 850, for an order that the property  
20 be turned over to Big Cat Rescue to be applied to the  
21 judgment.

22 The Court entered an order. And the order, docket 99,  
23 ordered Mr. Schreibvogel to obtain possession of the trailer  
24 within 5 days. He had control over it. He'd loaned it to his  
25 friend. To obtain possession in 5 days, which would have been

1 by -- I'm sorry. To contact plaintiff's counsel within 5 days  
2 to make arrangements to turn it over at a time and place  
3 agreeable to the plaintiff. So 5 days from the date of the  
4 order would have been June 14th.

5 And the order further ordered him to obtain possession  
6 and deliver within the jurisdictional limits of the court  
7 within 10 days of the date of the order, which would have been  
8 June 19th.

9 And the order further directed him not to damage or  
10 dispose of or transfer the property in any way in the interim.

11 And subsequently we did not have any contact with the  
12 plaintiff. We wound up reaching out to the plaintiff. We  
13 didn't hear anything within the time limits of the order.  
14 June 19th passed. We didn't hear anything from the  
15 plaintiff -- I'm sorry. I beg your pardon. The defendant.

16 We contacted defendant's counsel by e-mail to inquire why  
17 we hadn't heard anything. The deadline to communicate with us  
18 and to turn over the trailer had passed. We reached out to  
19 defendant's counsel several times and didn't have any  
20 substantive movement on producing the trailer.

21 Your Honor, under law -- case law provides that to  
22 establish civil contempt three things needs to be shown: That  
23 a valid court order exists; that the defendant had knowledge  
24 of the order; and that the defendant disobeyed and failed to  
25 comply with the order. All three of those things can be shown

1 here.

2 First, the order, docket 99, the turnover order, was a  
3 valid order. It was authorized by state law, Title 12,  
4 Section 850, which allows a court to require property to be  
5 turned over to satisfy a debt. And, therefore, the first  
6 prong was satisfied. It was a valid order.

7 Secondly, the defendant had knowledge of the order. The  
8 order was entered in this case. It was served via the ECF  
9 system. Defendant's counsel had a copy of the order. So  
10 there was knowledge of the order.

11 Third, the defendant did disobey and failed to comply  
12 with the order.

13 The order, again, was issued on June 5th and was very  
14 clear. It set out, in separately numbered paragraphs, that  
15 the defendant or his counsel was to contact plaintiff's  
16 counsel within 5 days of the date of the order, which would  
17 have been June 14th, to make arrangements.

18 No such contact was received. We did not receive an  
19 e-mail, a phone call, or any other contact from defendant or  
20 his counsel by June 14th. In fact, we didn't receive any  
21 contact at all even by June 19th, which was the date by which  
22 we were to have been delivered the trailer.

23 So defendant's -- neither defendant nor his counsel ever  
24 reached out to us. The defendant failed to contact us.

25 And I would request leave to present Mr. Kreth, who can

1 testify as to the contact that he initiated with the  
2 plaintiff's -- with the defendant's counsel, if this would be  
3 an appropriate time to --

4 THE COURT: I think I need to hear testimony. Of  
5 course your opening statement is not evidence.

6 MS. HINTZ: Yes.

7 THE COURT: So I'll need to hear -- well, it's up to  
8 you. You've got the burden if you want to produce a witness.

9 MS. HINTZ: Well, the reason I'm asking is because  
10 you requested an opening statement. I didn't know if you  
11 wanted to turn over to defendant now and have me do evidence  
12 later or how you wanted me to proceed.

13 THE COURT: Let's do opening statement from the  
14 defense. Anything from the defense?

15 I assumed you were finished. Were you finished?

16 MS. HINTZ: I would like to conclude my opening  
17 statement by saying that the order was valid, the defendant  
18 had reasonable knowledge, he completely failed to disobey --  
19 completely failed to obey the order and failed to comply with  
20 it.

21 In fact, as further evidence of the kind of lack of  
22 regard, he was ordered to be here today physically and isn't  
23 here and is voluntarily at Iowa at a state fair.

24 Coincidentally, he's there with Mr. Taranova, who he  
25 testified has possession of the trailer in Texas. They're



1 friends and they're at the Iowa fair together in Davenport,  
2 Iowa.

3 We are -- we -- because the order was not complied with,  
4 we reached out again to defendant's counsel advising that we  
5 were going to have to move for contempt if we didn't get some  
6 movement, some information, which our witness will testify.  
7 We didn't get any response, none at all.

8 So we did move for contempt, and there was no response to  
9 the contempt order. There was no motion to quash it. There  
10 was no phone call to us. There was no contact with us.

11 Subsequently the Court ordered -- issued the order that  
12 brings us here today, which was for Mr. Schreibvogel to come  
13 and show why he should not be held in contempt. Again, he  
14 failed to appear today.

15 So we will seek -- we believe we will present sufficient  
16 evidence of civil contempt under the prevailing law. We  
17 request an award of our fees and costs and an order that the  
18 Court -- an order by the Court rather to deliver -- that the  
19 defendant deliver the trailer to us within 10 days of today's  
20 date in a condition that is appropriate and has not been  
21 molested or damaged in any way since the date of the original  
22 Court's order and at a place convenient and acceptable to us.

23 If the defendant should fail to comply by delivering the  
24 trailer to us here within 10 days of the date of the Court's  
25 order, which would be Judge Friot's order, that further

1 contempt would be levied.

2 THE COURT: What do you believe to be the value of  
3 the trailer?

4 MS. HINTZ: Well, Your Honor, we haven't been able  
5 to access it to have it appraised, but judging by the pictures  
6 we have -- a picture was presented at the hearing on assets --  
7 and looking at values through reliable sources, we believe  
8 anywhere between \$6,000 and \$16,000.

9 THE COURT: 6 to 16,000?

10 MS. HINTZ: Yes.

11 It could be a little higher, but that seems to be the  
12 average range, the average -- taking into account the mileage  
13 and condition and so forth, which we don't know.

14 It's -- it's not a mileage in the sense of an odometer  
15 because it's a trailer that's pulled by a semi cab. It's not  
16 a motorized vehicle. It's a semi trailer of the type that  
17 would be pulled by, you know, 18-wheeler-type cab.

18 THE COURT: Anything further?

19 MS. HINTZ: No. Thank you.

20 THE COURT: All right. Opening from the defense or  
21 defendant.

22 MR. DAVIS: Thank you, Your Honor.

23 Defendant Joe Schreibvogel, however you want to say it --  
24 I'm going to butcher it, but you've got the spelling. There's  
25 no contest that there's a valid order, okay. There's no

1 contest that that order was properly delivered and properly  
2 served.

3 At the hearing on assets it was fully disclosed that  
4 there was a trailer. The location in Kaufman, Texas, was  
5 fully disclosed. While I don't have the transcript with me, I  
6 know at the hearing on assets it was at least voiced "if you  
7 guys want the trailer, you can have it." There's never been a  
8 challenge to them going and getting the trailer.

9 The trailer is probably not worth 16,000. It's probably  
10 not worth 6,000. It may be worth 4,000. That's probably  
11 being pretty liberal, maybe 5-.

12 The trailer is not tagged. It is not -- you can't  
13 transport it.

14 The defendant in this situation is -- these are my words.  
15 Based upon the hearing on assets, he is as close to destitute  
16 as one could be. He makes very little money. He will never  
17 challenge the plaintiffs going and getting the trailer nor  
18 does he challenge it now.

19 He would simply say he doesn't have the money to tag it  
20 and then transport it up here. But if they want to go get in  
21 Kaufman, Texas, they can.

22 If they need the title -- certificate of title to the  
23 trailer signed over to them, he can do that if he can find it.  
24 If not, he can sign a certificate for lost title.

25 The defendant, he is in Iowa. He is working. He is

1 conducting business. There's no doubt about that. He's not  
2 here to be in defiance of the Court. He's not trying to be in  
3 defiance of anything. He is willing to turn the trailer over.

4 There has been communication about this. I would call  
5 Ryan Duffy, when we get to the evidentiary side. Mr. Duffy is  
6 an attorney with Andrews Davis. There is a companion case to  
7 this case. This case that we're on today is the domestication  
8 of about a million-dollar judgment out of the state of  
9 Florida.

10 We're not challenging the domestication of the judgment.  
11 We're not -- we had participated in the HOA. We are not party  
12 to the other lawsuit. But Mr. Duffy, in order to try to  
13 settle the other lawsuit, also on behalf of my client and on  
14 behalf of me, to keep fees down to my client, did make sort of  
15 a global settlement offer.

16 And ironically one of the pieces of evidence I'm going to  
17 present is an e-mail from Mr. Duffy to plaintiff's counsel on  
18 the exact same day as the motion for contempt was filed simply  
19 saying that, "Hey, I've communicated with John Davis. You  
20 guys can go get the trailer," you know. And that's where we  
21 are.

22 So the first two elements, we don't challenge. We don't  
23 need to have an evidentiary hearing on that. It's a valid  
24 order. It was validly communicated, delivered, served,  
25 however you want to say it.

1 We'd completely challenge the fact that he's been  
2 defiant, disrespectful of the court. They can have the  
3 trailer. They can go to Kaufman, Texas, and get it. He will  
4 tell them exactly the location of it. I believe he told them  
5 that at the HOA. They know who's in possession of the  
6 trailer.

7 He has not physically been in possession of the trailer  
8 since he delivered it -- or his friend borrowed it and left it  
9 in Kaufman. He's not responsible for the condition of it.

10 He believes it's in the same condition as the pictures  
11 that were presented at the hearing on assets. Doesn't have  
12 the money to title it to get it up here.

13 So that would be our opening statement, Your Honor. It  
14 is a valid order; we do agree with that. There was  
15 communication through Mr. Duffy. I readily admit it wasn't  
16 through me; it was through Mr. Duffy. I do agree with that.

17 Do you have a question?

18 THE COURT: No, no. I'll save it for later. I did  
19 give you that look though, you're right.

20 MR. DAVIS: Thank you, Your Honor.

21 THE COURT: All right. Plaintiff may call its first  
22 witness.

23 MR. McVAY: Your Honor, if I could, this was just an  
24 opening statement. Is counsel then willing to stipulate for  
25 the record that the -- as to the validity of the order, that

1 the order is valid and that the order was properly served?  
2 Can we have that as a stipulation?

3 THE COURT: I believe that's what I heard.

4 MR. DAVIS: I stipulated.

5 MR. McVAY: I heard you say that. I just -- it was  
6 opening statement. I just wanted to make sure it was  
7 stipulated to.

8 THE COURT: You're right, opening statement is not  
9 evidence.

10 But, Counsel, you-all can stipulate as to Element 1,  
11 which is the order, ECF number 99 entered on June the 9th, is  
12 clear and unambiguous?

13 MR. DAVIS: Correct.

14 THE COURT: So we've got a stipulation --

15 MR. McVAY: Yes, Your Honor.

16 THE COURT: -- as to the first element.

17 The second element, the proof of Joe Exotic's  
18 noncompliance with the first order is clear and convincing.  
19 Do we have a stipulation on that?

20 MR. DAVIS: No, Your Honor. The second element is  
21 the service of the order, proper service, if I'm not mistaken.

22 THE COURT: You'll stipulate as to -- you-all may be  
23 looking at the Oklahoma statute. And I don't care about the  
24 Oklahoma statute on contempt. I'm going with the federal  
25 statute.

1       So proper service is stipulated. So he had notice of the  
2 order?

3           MR. DAVIS: Yes, Your Honor.

4           THE COURT: Okay. We've got that -- so that's the  
5 extent of the stipulation then.

6       We're not going any further than that?

7           MR. DAVIS: No, Your Honor.

8           THE COURT: Okay.

9           MR. McVAY: And then the remaining element that we  
10 have was failure to comply.

11          THE COURT: I think you've got -- clear and  
12 convincing is your burden on failure to comply.

13       You also have an additional element as -- well, I want to  
14 know whether Mr. -- whether Joe Exotic has been diligent in  
15 attempting to comply with the order. That's something I think  
16 that is going to, of course, come up on the defendant's side.

17       So with that, you may call your first witness.

18       Any other clarification needed?

19          MR. McVAY: No, Your Honor. Thank you.

20          MS. HINTZ: Your Honor, the plaintiff would call  
21 Jason Kreth.

22          THE COURT: All right. Mr. Kreth, if you'll come  
23 forward and be sworn.

24                               (Witness duly sworn)

25          THE COURT: Let me make something clear that I

1 perhaps didn't earlier.

2 As to the third element, what I see as the third element  
3 in this proceeding, it must be shown by plaintiff -- by the  
4 movant that Mr. Schreibvogel has not been reasonably diligent  
5 and energetic in attempting to accomplish what was ordered.

6 So to repeat, it must be shown that Joe Exotic has not  
7 been reasonably diligent and energetic in attempting to  
8 accomplish what was ordered. You may proceed.

9 MS. HINTZ: Your Honor, I think it might make more  
10 sense for Mr. McVay to question me first since I was the first  
11 individual, chronologically, that had actual movement with  
12 respect to this order.

13 THE COURT: Certainly.

14 MS. HINTZ: So if we could switch.

15 But I'd also like to ask, since we've already discussed  
16 some stipulations, can we stipulate as to orders and motions  
17 and such that are a part of the court record, or do we need  
18 to -- are you considering those to be evidentiary matters that  
19 need to be entered into the -- if the witness is going to  
20 review an order, does it need to be entered in as an exhibit,  
21 or can we simply refer to the docket number?

22 THE COURT: I think you can refer to it by docket  
23 number.

24 Any objection?

25 MR. DAVIS: No objection, Your Honor.



1 MS. HINTZ: Thank you.

2 (Witness duly sworn)

3 THE COURT: All right. So we've got Mr. McVay  
4 performing a direct examination of Heather Hintz.

5 **HEATHER LEE HINTZ,**  
6 after having been first duly sworn, testifies as follows:

7 **DIRECT EXAMINATION**

8 BY MR. McVAY:

9 Q. Please state your full name.

10 A. Heather Lee Hintz.

11 Q. Ms. Hintz, where are you employed?

12 A. I am employed as a lawyer at Phillips Murrah, PC law firm  
13 in Oklahoma City.

14 Q. How long have you been employed there?

15 A. I've been employed there for 25 years this month.

16 Q. And have you served as counsel for the plaintiff, Big Cat  
17 Rescue, in this proceeding?

18 A. Yes.

19 Q. How long have you served as counsel for Big Cat Rescue in  
20 this proceeding?

21 A. I've represented Big Cat Rescue since 2012. But in this  
22 FJ-1 case, since the spring -- probably February, March of  
23 2013.

24 Q. Have you represented Big Cat Rescue with respect to  
25 judgments that had it obtained in the Middle District of

1 Florida against the Defendant Joe Schreibvogel?

2 A. In the state of Oklahoma, yes, I've represented Big Cat  
3 Rescue. I did not represent them in the Florida litigation.

4 Q. What is the total amount of that judgment -- or those  
5 judgments?

6 A. The three judgments are over \$1 million dollars.  
7 They're, I believe, 1.03 million.

8 Q. And have those judgments been domesticated in the United  
9 States district court for the Western District of Oklahoma?

10 A. Yes. They were domesticated in three different cases in  
11 the United States District Court for the Western District.  
12 There's 2013-FJ-1, which is the case we're in here today.  
13 That was a \$953,000 judgment.

14 Then there was 2013-FJ-2, and then 2013-FJ-3. They were  
15 all assigned to Judge Friot.

16 Q. Once those judgments were filed on behalf of the  
17 plaintiff, Big Cat Rescue, did you file a motion for a hearing  
18 on assets and obtain an order from this court in that regard?

19 A. Yes.

20 I filed a motion for hearing on assets and obtained an  
21 order for a hearing on assets.

22 Q. Was a hearing on assets then conducted on March the 6th,  
23 2015, of Joe Schreibvogel -- Defendant Joe Schreibvogel?

24 A. It was. But the first motion for hearing on assets was  
25 filed in 2013. And the day the order issued,

1 Mr. Schreibvogel -- on the day it was issued or around the day  
2 it was issued -- I can't remember exactly if it was the day of  
3 or the next day -- he filed a Chapter 7 bankruptcy proceeding.

4 So the original hearing on assets in this case that was  
5 set for the spring of 2013 was withdrawn since he -- the  
6 defendant filed a Chapter 7 bankruptcy proceeding.

7 So we then proceeded to conduct a Rule 2004 examination  
8 in the bankruptcy proceeding and ultimately the -- all of  
9 Mr. Schreibvogel's debts, including the debts to Big Cat  
10 Rescue, were determined to be non-dischargeable, and the stay  
11 was lifted.

12 And then the proceedings began again in this case, and we  
13 did file a motion for hearing on assets. The hearing on  
14 assets was ultimately conducted on March 6th of 2015.

15 Q. And that hearing on assets was, in fact, conducted by  
16 myself and you; is that correct?

17 A. That's right.

18 Q. And during that -- in conducting that hearing on assets,  
19 did you learn that there was a Dane trailer that was owned by  
20 Mr. Schreibvogel personally that had no liens against it?

21 A. Yes, a Great Dane trailer.

22 Q. During the course of that hearing on assets, did you  
23 learn where that trailer was located?

24 A. It was testified that it was located in Kaufman, Texas.

25 Q. What was your understanding as to why it was located in

1 Kaufman, Texas?

2 A. My understanding was that Mr. Schreibvogel, the  
3 defendant, was good friends with a tiger handler named Doug  
4 Taranova, who ran a company called Taranova Enterprises, and  
5 they frequently did favors for one another.

6 And Mr. Taranova had both a semi cab that would pull the  
7 Great Dane trailer and the Great Dane trailer located on his  
8 property in Kaufman, Texas, just on a borrowing situation. He  
9 needed it to move an animal, I believe was the testimony.

10 Q. So the unencumbered trailer owned by Mr. Schreibvogel was  
11 located in Kaufman, Texas, on Mr. Taranova's property; is that  
12 correct?

13 A. That was my understanding from the testimony.

14 Q. Okay. Subsequent to the hearing on assets, did you, on  
15 behalf of Big Cat Rescue, file a motion for turnover of  
16 property that asked this Court to require that  
17 Mr. Schreibvogel turn over the Great Dane trailer?

18 A. Yes.

19 Q. That, in fact, is document number 88 and it was filed on  
20 April 14th, 2015; is that correct?

21 A. Correct.

22 Q. And subsequent to filing this motion -- let me ask it  
23 this way: After filing this motion, did Mr. Schreibvogel or  
24 his counsel ever file a response to the motion for turnover?

25 A. No.

1 Q. Were they properly served?

2 A. Yes.

3 Q. Having not received any response, did this Court enter an  
4 order granting plaintiff's motion for turnover of property,  
5 document 99, which was filed on June 9th, 2015?

6 A. Yes.

7 MR. McVAY: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. McVAY) Do you just have one copy?

10 A. Yes.

11 Q. I thought I had an extra copy to give to counsel.

12 THE COURT: It's document number 99.

13 MR. McVAY: Yeah, it is document number 99. I seem  
14 to only have the two copies.

15 THE COURT: You can have mine.

16 Q. (BY MR. McVAY) Let me refer you to document number 99,  
17 which has been marked as Plaintiff's Exhibit No. 1.

18 MR. McVAY: I apologize to the Court and Counsel.

19 MR. DAVIS: Your Honor, we'll stipulate that  
20 document 99 is a matter of court record and it's a valid  
21 order. We don't have any problem with that.

22 THE COURT: All right. So it really doesn't even  
23 need to be admitted. If you want to admit it, fine. It's  
24 admitted, document 99.

25 MR. McVAY: All right.

1 Q. (BY MR. McVAY) Let me refer you to Plaintiff's Exhibit  
2 No. 1 and page 2 of that document.

3 If you could look at paragraph 4. Can you read paragraph  
4 4, in terms of what the Court has ordered with respect to this  
5 document?

6 A. Numerical paragraph 4?

7 Q. Yes.

8 A. It says, "Accordingly, the motion is deemed confessed and  
9 the relief requested therein by BCR should be and is hereby  
10 granted."

11 Q. Then proceeding on.

12 A. "It is therefore ordered, adjudged, and decreed the  
13 defendant is directed to obtain possession of the Great Dane  
14 trailer, VIN No. 1GRAA0618TS080003, (the "trailer") identified  
15 in the motion and deliver the trailer to BCR within 10 days of  
16 the date of this order.

17 "It is further ordered --

18 Q. Let me stop you right there for a minute, if I could.

19 This order is dated June the 9th, 2015; is that correct?

20 A. Yes.

21 Q. Pursuant to that paragraph that you just read, was the  
22 Great Dane trailer delivered to the plaintiff within 10 days  
23 of the date of this order or by June the 19th?

24 A. It was not.

25 Q. All right. If you would read the next paragraph.

1 A. "It is further ordered, adjudged, and decreed the  
2 defendant or his counsel shall contact counsel for BCR within  
3 5 days of the date of this order to arrange a time and  
4 location suitable to BCR and within the jurisdictional limits  
5 of this Court for delivery of the trailer to BCR in accordance  
6 with this order."

7 Q. Pursuant to the Court's order and the reading of this  
8 paragraph, did you receive any communication from  
9 Mr. Schreibvogel or his counsel within 5 days of the date of  
10 this order to arrange a time and location suitable for BCR to  
11 obtain delivery of the Great Dane trailer?

12 A. I did not.

13 And in conferring with others, there was no communication  
14 received.

15 Q. When you say "with others," in conferring with other  
16 members of your firm?

17 A. I believe I spoke with you, Mr. McVay, and I spoke with  
18 Mr. Kreth.

19 Q. Those would be all of the people that are involved in  
20 this proceeding; is that correct?

21 A. Yes.

22 Q. Having not received possession of the Great Dane trailer  
23 or any information from defendant or defendant's counsel as to  
24 a time or location to pick up the trailer, did you, on behalf  
25 of the plaintiff, Big Cat Rescue, file a motion for turnover

1 of property?

2 A. I did.

3 Q. And was that filed on --

4 A. Actually, it was a motion for -- it was a motion for --

5 Q. For contempt?

6 A. For contempt, yes.

7 Q. Right.

8 And do you recall when that was filed?

9 A. The 14th of June, I believe.

10 THE COURT: Let's get a stipulation here. We're  
11 talking about document number 100.

12 Will the parties stipulate that document number 100 is  
13 plaintiff's motion to hold Joe Schreibvogel in contempt?

14 MR. DAVIS: Yes. It was filed on July the 10th.

15 WITNESS: July the 10th.

16 THE COURT: And filed on July the 10th. So we don't  
17 need to introduce that as --

18 MR. DAVIS: So stipulated.

19 THE COURT: Unless you just want to refer to it as  
20 Exhibit No. 2, if that's what's coming.

21 MR. McVAY: I don't think I'll need to do that if  
22 we're stipulating at this point.

23 Q. (BY MR. McVAY) Was plaintiff's motion to hold Defendant  
24 Joe Schreibvogel in contempt of court, document number 100,  
25 served on counsel for the defendant?



1 A. It was through the ECF system of the Court.

2 MR. DAVIS: We'll stipulate there was service, Your  
3 Honor.

4 THE COURT: Okay.

5 MR. McVAY: Thank you, Counsel.

6 THE COURT: All right. We've got a stipulation as  
7 to service on counsel and I think also a stipulation as to  
8 service on Mr. Schreibvogel.

9 MR. DAVIS: Yes, Your Honor.

10 THE COURT: Of the motion and the order?

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: Document number 100 and document  
13 number --

14 MR. McVAY: 102.

15 THE COURT: -- 102.

16 Q. (BY MR. McVAY) Ms. Hintz, was any response filed by  
17 Mr. Schreibvogel or his counsel with respect to Big Cat Rescue  
18 Corporation's motion to hold Mr. Schreibvogel in contempt?

19 A. There was no response filed.

20 Q. In fact, on July 17th, 2015, the Court issued its order  
21 to show cause; is that correct?

22 A. Yes.

23 Q. And that's document number 102 --

24 A. Yes.

25 Q. -- for the record?

1 And did that order order Mr. Schreibvogel to appear today  
2 at two o'clock in this courtroom?

3 A. Yes.

4 Q. And as already has been, I believe, stipulated by counsel  
5 to the Court, Mr. Schreibvogel is not present today; is that  
6 correct?

7 A. Correct.

8 Q. Until you received a call -- well, did you receive a call  
9 this morning from Mr. Schreibvogel's counsel?

10 A. I did not receive a call from Mr. Schreibvogel's counsel.

11 I received a call from Mr. Duffy, who represents the  
12 Gerold Wayne Interactive Zoological Park in another action,  
13 and Mr. Schreibvogel works for the Gerold Wayne Interactive  
14 Zoological Park, but Mr. Duffy does not represent  
15 Mr. Schreibvogel in this action.

16 Mr. Duffy called this morning, which was the first I had  
17 heard from anyone affiliated with Mr. Schreibvogel since the  
18 order to show cause had been issued.

19 From the order to show cause for Mr. Schreibvogel to  
20 appear today, I did not receive any contact from anyone  
21 affiliated with Mr. Schreibvogel with regard to the order or  
22 the hearing set for today.

23 This morning, I did receive a call from Mr. Duffy asking  
24 for a call back. I called him back with you, Mr. McVay,  
25 and --

1 Q. That's all I'm asking at this point.

2 A. Yes, uh-huh.

3 Q. Up until this morning -- from the time that the Court  
4 issued its order granting plaintiff's motion for turnover of  
5 property to this morning, had you received any contact from  
6 Mr. Schreibvogel or his counsel with respect to the turnover  
7 of property or the order to show cause offering any  
8 explanation or demonstrating in any way that Mr. Schreibvogel  
9 has been diligent in attempting to turn over the trailer?

10 A. No.

11 There was an e-mail from -- it was not from  
12 Mr. Schreibvogel's counsel. It was from the -- I believe the  
13 zoo's counsel, and it disclaimed any interest of the zoo in  
14 the trailer.

15 It said the trailer was Mr. Schreibvogel's and the  
16 trailer remained in Texas. And I believe Mr. Davis was copied  
17 on that e-mail saying that he, you know, could then take over  
18 and do whatever he needed to do to -- I don't know what was  
19 intended by the sender of the e-mail, but we never received  
20 any contact from Mr. Davis after that e-mail from Mr. Duffy or  
21 his colleague.

22 Q. So other than the e-mail that you've talked about and  
23 other than the conversation this morning, those are the only  
24 communications that you've had or any member of your firm  
25 involved in this case has had with respect to the turnover of

1 the Great Dane trailer; is that correct?

2 A. Well, we had some, what I would characterize as  
3 primarily, unilateral communications when we did not receive  
4 any communication between the date that the order was issued  
5 and then the response dates required, I believe it was the  
6 15th and the 19th of June.

7 The order was issued, I believe, the 9th of June. The  
8 order directed the defendant to contact us by the 9th of June.  
9 We did not receive any contact by the 9th of June.

10 The order required Mr. Schreibvogel or his counsel to  
11 deliver the trailer by the 15th of June. We did not receive  
12 any contact.

13 At some point after that I asked Mr. Kreth to reach out  
14 to Mr. Davis and try to establish --

15 Q. So is it fair to say that you and members of your firm  
16 were diligent in following up with Mr. Schreibvogel as to why  
17 the Court's order had not been obeyed?

18 A. I believe so, yes.

19 Q. But, in fact, Mr. Schreibvogel or his counsel was never  
20 diligent in following up with you or any member of your firm  
21 until here recently as to why the trailer had not been turned  
22 over; is that correct?

23 MR. DAVIS: I object. Mischaracterization of the  
24 testimony and a leading question.

25 WITNESS: Well --

1 THE COURT: Sustained.

2 WITNESS: -- we -- I did not receive any  
3 communication that -- I received absolutely no communication  
4 during the response time that was required by the order.

5 So there was -- I don't think -- there was zero  
6 communication from defendant or defendant's counsel by --  
7 before June 15th.

8 Q. (BY MR. McVAY) Let me ask you this: Mr. Davis is counsel  
9 for Joe Schreibvogel; correct?

10 A. Yes.

11 Q. When was the last time you any communication from Joe  
12 Schreibvogel, other than this morning, or his counsel?  
13 Mr. Schreibvogel or his counsel other than this morning?

14 A. I personally -- it would have been before the order was  
15 entered, aside from the fact that he was cc'd on the e-mail  
16 from -- he was cc'd on the e-mail from plaintiff's -- from  
17 defendant's -- I beg your pardon. Gerold Wayne Zoo's counsel,  
18 but it was not a communication from Mr. Davis.

19 I have received no communications from Mr. Davis since  
20 the Court's order for turnover was entered.

21 Q. Do you know where the Dane trailer is today?

22 A. My understanding is that it's still located in Kaufman,  
23 Texas, but Mr. Schreibvogel is at a fair with Mr. Taranova in  
24 Iowa. In the past they've used that trailer to transport  
25 animals. So I don't know if they --

1 MR. DAVIS: Your Honor, we will stipulate that the  
2 trailer is in Kaufman, Texas. It is not in Iowa. It is not  
3 tagged. It is not legally available to go on the interstate  
4 highway system.

5 THE COURT: Okay. So stipulated.

6 Q. (BY MR. McVAY) Just to make it clear -- I think it's  
7 pretty clear from your testimony -- that Big Cat Rescue is  
8 not, in fact, in possession of the trailer at this time?

9 A. Correct.

10 MR. McVAY: Can I have just one minute, Your Honor?

11 THE COURT: Certainly.

12 MR. McVAY: May I approach, Your Honor?

13 THE COURT: You may.

14 Q. (BY MR. McVAY) Ms. Hintz, really for the benefit of the  
15 Court, I think, more than counsel, I've handed you what has  
16 been marked as Plaintiff's Exhibit 2. That's from the  
17 deposition of Mr. Schreibvogel.

18 Is that the trailer that we're talking about at the top  
19 of that exhibit, the Dane trailer?

20 A. My understanding is that is how Mr. Schreibvogel  
21 identified it in his deposition. I have not seen the VIN  
22 number on the trailer.

23 Q. Okay.

24 A. That is the trailer he identified at the hearing on  
25 assets.

1 Q. All right.

2 MR. McVAY: Move to admit Exhibit No. 2, Your Honor.

3 THE COURT: Mr. Davis?

4 MR. DAVIS: No objection.

5 THE COURT: All right. Plaintiff's 2 will be  
6 admitted. It's consisting of two pages.

7 MR. McVAY: I believe that's all I have, Your Honor,  
8 if we could reserve the right to recall Ms. Hintz for  
9 rebuttal.

10 THE COURT: Certainly.

11 MR. McVAY: Thank you.

12 THE COURT: Mr. Davis, cross-examination.

13 MR. DAVIS: I'll be short, Your Honor.

14 THE COURT: That's what they always say.

15 MR. DAVIS: No. I will be.

16 **CROSS-EXAMINATION**

17 BY MR. DAVIS:

18 Q. Counsel, has Mel McVay entered an appearance in this case  
19 or in the other case?

20 A. I would have to refer to the docket sheet.

21 Q. May I approach, Your Honor?

22 THE COURT: I've got the docket sheet if you want  
23 it.

24 Q. (BY MR. DAVIS) The reason I'm asking is because of the  
25 signature block; it's got you and Mr. Kreth. I'm just --

1 THE COURT: Here. Let's go off the record just for  
2 a second.

3 (Discussion held off the record).

4 Q. (BY MR. DAVIS) Off the record we established that  
5 Mr. McVay is counsel -- one of counsel of record in this  
6 matter.

7 Are you legal counsel in the other case that Mr. Duffy is  
8 in?

9 A. I don't know which case you're referring to, but if  
10 you're referring to the case pending before Judge Cauthron --

11 Q. Yes.

12 A. -- yes, I am.

13 Q. Okay. And has Mr. McVay entered an appearance in that  
14 case?

15 A. Yes.

16 Q. And has Mr. Kreth entered an appearance in that case?

17 A. I don't recall.

18 Q. What about Mr. -- one second, Your Honor. What about  
19 Mr. Justin Givens?

20 A. He has.

21 Q. Okay. But maybe not Mr. Kreth? We don't know?

22 A. We'd have to check the docket sheet.

23 Q. Okay. The reason I'm asking is because -- have you been  
24 part of the -- what I'm going to call settlement negotiations  
25 between Mr. Duffy in the Judge Cauthron case and your client,



1 which is the same plaintiff in that case as in this case?

2 MR. McVAY: Objection. Relevancy.

3 MR. DAVIS: Well, Your Honor, we're trying to  
4 establish that the defendant here, Joe Schreibvogel, has been  
5 cooperating as far back as the hearing on assets about this  
6 trailer, and that Mr. Duffy has been in communication on a  
7 global settlement.

8 THE COURT: Objection overruled.

9 MR. DAVIS: Okay.

10 Q. (BY MR. DAVIS) Were you a part of those, or was that  
11 something that Mr. McVay did or Mr. Kreth did or Mr. Givens  
12 did, those settlement negotiations and discussions and  
13 e-mails?

14 A. I have been a part of the settlement discussions.

15 Q. Okay. Is it a fair statement that those settlement  
16 discussions started around mid-June?

17 A. I would have to refer to the correspondence and my notes.

18 Q. Okay. As part of those settlement discussions, was there  
19 an element that, not only this trailer that's the subject  
20 matter of this contempt hearing, but that also any and all  
21 other liability regarding the defendant in this case would be  
22 resolved as part of a global settlement?

23 A. The trailer was not referenced in the settlement offer.

24 Q. Okay. Was a global settlement offer, including a release  
25 of Mr. Schreibvogel, part of those settlement discussions,

1 e-mails, negotiations?

2 A. I would have to refer to the settlement offer, which was  
3 confidential. So I would not think it should be made a part  
4 of a public record in the case. I don't know if we're going  
5 to seal this transcript.

6 It's a little awkward to be a witness and a lawyer.

7 Q. I understand.

8 A. The settlement offer that was made was a confidential  
9 settlement offer.

10 Q. Okay.

11 A. The offer had a very short-term put to it, which has  
12 since passed.

13 Q. Okay. So it's fair to tell the Court that there was no  
14 settlement, but there was ongoing settlement negotiations; is  
15 that --

16 A. There was a settlement offer that was -- my understanding  
17 is, there was one settlement offer made by the defendant,  
18 Gerold Wayne Zoo, in the Judge Cauthron -- in the litigation  
19 pending before Judge Cauthron that was intended to be a global  
20 settlement.

21 There was not a response to the settlement. There has  
22 been no settlement consummated.

23 Q. I just want to make sure we're clear. As part of a  
24 global settlement it would have included the release of Joe  
25 Schreibvogel in this particular judgment, this trailer; it

1 would have resolved all of those issues?

2 A. I would have to refer to the document.

3 Q. Okay.

4 MR. DAVIS: No further questions, Your Honor.

5 THE COURT: All right. Redirect, Mr. McVay?

6 MR. McVAY: Just maybe one question.

7 **REDIRECT EXAMINATION**

8 BY MR. McVAY:

9 Q. Do you recall, Ms. Hintz, when that settlement offer that  
10 Mr. Davis is referring to terminated, approximately?

11 A. I believe it terminated -- well, I don't have that letter  
12 in front of me, but I think it had a 4-day -- 4- or 5-day  
13 trigger on it.

14 If it was, in fact, mid-June, as indicated, it would have  
15 been -- you know, it would have terminated before we filed our  
16 motion for contempt.

17 Q. You're anticipating my questions, but that's okay,  
18 because that was my next question, is whether that settlement  
19 offer terminated prior to the filing of the motion for  
20 contempt and the order setting this hearing for today?

21 A. Yes. We didn't respond to -- there haven't been ongoing  
22 negotiations.

23 Q. Is there any settlement offer currently pending?

24 A. No.

25 MR. McVAY: That's all I have, Your Honor.

1 THE COURT: All right. Recross?

2 MR. DAVIS: I want to be very careful how I ask this  
3 question.

4 **RECROSS-EXAMINATION**

5 BY MR. DAVIS:

6 Q. Did I hear your testimony to say that there is not  
7 current ongoing settlement negotiations? Is that correct?

8 A. Well, my understanding is that -- I mean, I think those  
9 are terms of art.

10 There was a formal settlement offer that was made by  
11 the -- one of the defendants in the Gerold Wayne Zoo related  
12 litigation that's pending before Judge Cauthron.

13 Q. Okay.

14 A. That's an alter ego case that Mr. Schreibvogel is not a  
15 party to.

16 Q. I understand he's not a party to it.

17 A. And a written settlement offer was made by the Gerold  
18 Wayne Zoo that contemplated folding in some other parties to  
19 the various cases in a global settlement.

20 The letter -- I don't have it in front of me, but my  
21 recollection is that it had a very short shelf life of 4 or 5  
22 days.

23 That shelf life passed and the offer was not responded  
24 to. We have not received a subsequent formal settlement offer  
25 from the parties in that litigation. We have not made a

1 formal settlement offer in that litigation.

2 Q. Justin Givens is in the Judge Cauthron case? He's  
3 entered an appearance; correct?

4 A. Yes.

5 Q. Okay. If I made the statement that last Thursday, when  
6 Mr. Duffy was at the airport on the way to Chicago to a  
7 wedding, if I made the statement that Justin and he talked on  
8 the phone and Justin said to expect a settlement offer early  
9 this week, would you disagree that your co-worker, your  
10 co-employee, made that statement to Mr. Duffy?

11 A. I don't have any way to agree or disagree with that  
12 statement.

13 Q. Do you know anybody in your firm that would know the  
14 status of the current ongoing global settlement in the Judge  
15 Cauthron case that would include the resolution of this  
16 matter?

17 A. I don't understand your question.

18 Q. Okay.

19 A. I've already testified that I'm involved in the  
20 settlement negotiations. I don't know what Mr. Givens said  
21 to -- or didn't say to Mr. Duffy or whomever.

22 Q. But you don't dispute they had a conversation last  
23 Thursday?

24 A. I don't dispute or agree. I don't know.

25 Q. Okay. Do you know anyone at your firm that would be able

1 to corroborate what Mr. Duffy's anticipated to testify to, one  
2 way are the other, corroborate or deny it?

3 Would Mr. McVay know?

4 A. I don't know anything about the conversation.

5 MR. DAVIS: Okay. Thank you, Your Honor.

6 THE COURT: You may step down.

7 (Witness excused).

8 THE COURT: The plaintiff may call its next witness.

9 MS. HINTZ: We now do call finally Mr. Kreth.

10 THE COURT: If you'll come forward and be sworn.

11 (Witness duly sworn)

12 **MICHAEL LEE KRETH,**

13 after having been first duly sworn, testifies as follows:

14 **DIRECT EXAMINATION**

15 BY MS. HINTZ:

16 Q. Mr. Kreth, would you please state your name?

17 A. It's Jason Michael Kreth.

18 Q. And where are you employed?

19 A. I am an attorney with the law firm of Phillips Murrah  
20 here in Oklahoma City.

21 Q. Have you entered an appearance in the case that we're  
22 here on today?

23 A. I believe so.

24 Q. Mr. Kreth, are you familiar with the Court's turnover  
25 order entered in this case, which has been stipulated to be

1 document 99?

2 A. I am.

3 MS. HINTZ: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 Q. (BY MS. HINTZ) This has already been entered into the  
6 record as Exhibit 1. I would ask you to take a look at it and  
7 see if you're familiar with the order.

8 A. I am familiar with this order.

9 Q. How did you become familiar with the order?

10 A. I believe I had a hand in drafting it.

11 Q. And do you recall being asked to follow up on the order  
12 after the -- at some point after the order was entered?

13 A. I do.

14 Q. Did you, in fact, engage in any follow-up with defendant  
15 or defendant's counsel with respect to the order after it had  
16 been entered?

17 A. I did.

18 You had come to me after the time period for turnover of  
19 the trailer had passed and asked me to follow up with John  
20 Davis directly.

21 I believe my first attempted contact was on June 24th, if  
22 memory serves. I tried to call Mr. Davis, was unable to reach  
23 him, and sent him an e-mail that same day indicating that I  
24 was trying to reach him to discuss turnover of the Great Dane  
25 trailer before we proceeded with moving for contempt.

1 Q. Did you receive a response to that e-mail?

2 A. I did. I don't recall if it was the same day or if it  
3 was a day or two later, but Mr. Davis responded to me,  
4 indicated that he had been out of the office for medical  
5 issues and that he would get back with me the following  
6 Monday.

7 MS. HINTZ: May I approach again?

8 THE COURT: You may.

9 MS. HINTZ: Let me mark this.

10 Q. (BY MS. HINTZ) Mr. Kreth, I've handed you what's been  
11 marked as -- or will soon be marked as Exhibit 2. I beg your  
12 pardon. Exhibit 3. I seem to have misplaced my exhibit  
13 stickers.

14 Mr. Kreth, have you had a chance to review what I've  
15 handed to you marked Exhibit 3?

16 A. I have.

17 Q. And would you describe it?

18 A. It is an e-mail chain between principally myself and John  
19 Davis. It's the series of e-mails I mentioned a second ago,  
20 beginning with my first e-mail on June 24th at 10:45 following  
21 up on my phone call to Mr. Davis, his response to me about  
22 being out on medical issue, and then my response to him  
23 indicating that I would follow up with him on Monday.

24 Q. Could you please, with the date, read them into the  
25 record in chronological order, starting on page 2 of Exhibit



1 3?

2 A. Would you like me to read the content of the e-mails?

3 Q. Just the content of the e-mail, yes, and the date.

4 A. Okay. Wednesday, June 24th, 2015, at 10:45, from myself  
5 to John Davis.

6 "John, I called you on this but thought I'd send an  
7 e-mail as well" --

8 MR. DAVIS: Your Honor, we'll stipulate what the  
9 e-mail says.

10 THE COURT: All right. And stipulate as to  
11 admission of the e-mail into evidence?

12 MR. DAVIS: Yes.

13 THE COURT: All right. So Plaintiff's Exhibit 3  
14 will be admitted. Thank you.

15 Q. (BY MS. HINTZ) Mr. Kreth, is it fair to indicate that you  
16 contacted Mr. Davis on June 24th as a follow-up to a phone  
17 call asking for -- well, why don't you just go ahead and read  
18 that into the record as you were?

19 A. Okay. The first e-mail?

20 Q. Yes.

21 A. "John, I called you on this but thought I'd send an  
22 e-mail as well. I'm one of the attorneys representing Big Cat  
23 in the above-referenced matter.

24 "On June 9th an order was entered directing Schreibvogel  
25 to retrieve a Great Dane trailer and deliver it to us on or

1 before June 19th. That hasn't been done.

2 "Before we end up moving for contempt, I wanted to touch  
3 base to try to figure out what was going on and if anything  
4 might be resolved ahead of us taking that next step. Please  
5 give me a call or an e-mail and let me know."

6 Q. And was there a response from Mr. Davis?

7 A. There was.

8 Q. And did that, again, indicate that you would be following  
9 up on -- with each other on Monday?

10 A. That's correct. He indicated he'd been out of the office  
11 for a medical issue, and that he hadn't talked to his client  
12 about the matter yet, but that he would get back with me on  
13 Monday.

14 MS. HINTZ: Your Honor, may I approach the witness?

15 THE COURT: You may.

16 Q. (BY MS. HINTZ) Mr. Kreth, in the e-mail chain that's  
17 before you as Exhibit 3, did you, in fact, agree that you'd  
18 follow up with him on Monday?

19 A. I did.

20 Q. And do you recall what happened after that e-mail, in  
21 terms of your communication with Mr. Davis?

22 A. I never heard back from him.

23 Q. Did you reach out to him again?

24 A. I did.

25 MS. HINTZ: Your Honor, may I approach the witness

1 again?

2 THE COURT: Certainly.

3 Q. (BY MS. HINTZ) Mr. Kreth, I'm handing you what's been  
4 marked as Defendant's -- rather, Plaintiff's Exhibit 4.

5 THE COURT: Mr. Davis, any objection to admission of  
6 Plaintiff's 4?

7 MR. DAVIS: No, Your Honor.

8 THE COURT: All right. Plaintiff's 4 will be  
9 admitted.

10 Q. (BY MS. HINTZ) Do you recognize that document?

11 A. I do.

12 Q. And what does it indicate?

13 A. It's an e-mail from me to John Davis cc'ing Kip Reiswig,  
14 who I believe is another attorney in John Davis's office, as  
15 well as yourself.

16 It's a follow-up on Mr. Davis and I's previous  
17 discussions.

18 I indicated that I would need to file a motion for  
19 contempt in the next day or two if we didn't have some solid  
20 movement on the turnover issue and to please let me know where  
21 we stood.

22 Q. And did you receive any further contact from Mr. Davis  
23 after that e-mail of June 29th?

24 A. I did not.

25 Q. And just to be clear, you didn't have any contact with

1 regard to delivering the trailer or arrange a time for the  
2 delivery of the trailer or to indicate that Mr. Schreibvogel  
3 had obtained possession of the trailer and was ready to  
4 transport it to our client, Big Cat Rescue?

5 A. Can you rephrase that?

6 Q. You didn't have any communications with Mr. Davis -- you  
7 didn't receive any communications with Mr. Davis -- from  
8 Mr. Davis after the date of that e-mail in Exhibit 4, which is  
9 dated June 29th, no response to that e-mail with regard to  
10 complying with the order to turn over the trailer?

11 A. That is correct.

12 Q. You weren't asked to arrange a time? You weren't asked  
13 to -- you weren't advised that possession of the trailer had  
14 been obtained as the order required?

15 A. That's correct, I was never advised of that.

16 Q. In fact, you had no further communication at all?

17 A. That's correct.

18 Q. With Mr. Davis?

19 A. With Mr. Davis, yes.

20 Q. And does that also mean that you had no further  
21 communication with his associate who's also cc'd on that  
22 e-mail?

23 A. That is correct.

24 MS. HINTZ: I don't have any further questions at  
25 this time.

1 THE COURT: All right. Other witnesses for  
2 plaintiff?

3 I'm sorry. Cross-examination?

4 Here's what I was distracted by: In our anteroom, I  
5 told -- I advised counsel that this may well be a dress  
6 rehearsal for what Judge Friot has planned.

7 You should proceed as if you won't be able to call  
8 additional witnesses or produce -- or make additional  
9 argument.

10 I think what will likely happen in this case is that  
11 Judge Friot will have me do a report and recommendation.  
12 You'll receive that report and recommendation. You'll have 14  
13 calendar days to object to that report and recommendation.

14 You should assume, I think for -- for your own good,  
15 assume that Judge Friot will not give you an opportunity to  
16 make additional argument or call additional witnesses. I  
17 think this will be it, as far as the evidentiary part goes.

18 Now, hypothetically, if I certify as to facts  
19 constituting contempt and send that to Judge Friot, then there  
20 will be the issue of punishment for contempt. And I'm not  
21 quite sure how he's going to handle that, whether he'll have  
22 another hearing or whether he will just do that on paper.

23 So proceed as if this is your only opportunity to offer  
24 evidence.

25 MS. HINTZ: Your Honor, may I ask a question?

1 THE COURT: Certainly.

2 MS. HINTZ: In opposing Counsel's opening statement  
3 there were some averments made that are not of evidentiary  
4 value, but, you know, if the witness had appeared, as he was  
5 ordered, potentially there could be have some evidence taken,  
6 but he did not appear.

7 We did not object to any of those statements at the time  
8 because you had indicated that opening statements had no  
9 evidentiary value.

10 THE COURT: And I assure you that that will be Judge  
11 Friot's conclusion as well. Someone that is not under oath is  
12 just someone talking.

13 While I appreciate opening statements because it gives me  
14 a bit of a road map for what I expect to hear in the way of  
15 evidence, it's not evidence. So don't worry about that.

16 MS. HINTZ: Will we be given the opportunity to make  
17 a closing statement at the conclusion of the proceedings?

18 THE COURT: Certainly, certainly. Since you've got  
19 the burden, it will be closing from plaintiff, closing from  
20 the defendants, and then rebuttal from the plaintiff.

21 MS. HINTZ: Thank you, Your Honor.

22 We would like to reserve the right to recall or to  
23 redirect Mr. Kreth.

24 THE COURT: Certainly. You'll have a right to call  
25 rebuttal witnesses.

1 MS. HINTZ: Thank you.

2 We, if possible, would also like to confer after to  
3 determine if we need to call an additional witness just  
4 briefly.

5 THE COURT: Certainly.

6 MS. HINTZ: Thank you.

7 THE COURT: Now, Judge Friot may decide to do  
8 something completely different, but I want -- for your own  
9 safety, I think, assume that this is all you're going to get,  
10 as far as the opportunity to present evidence.

11 MS. HINTZ: Thank you.

12 THE COURT: All right. Now cross-examination,  
13 Mr. Davis.

14 **CROSS-EXAMINATION**

15 BY MR. DAVIS:

16 Q. Mr. Kreth, do you know who Justin Givens is?

17 A. Yeah. He's one of the attorneys at our firm.

18 Q. Okay. And do you know if you have entered an appearance  
19 in what's being referred to as "the Judge Cauthron case"?

20 A. I honestly don't recall.

21 Q. Okay. Were you aware of settlement negotiations and  
22 e-mails and discussions in late June and early July?

23 A. I was aware that there were some discussions. I did not  
24 know the content of them, and I do not recall when those  
25 discussions were.

1 Q. Okay. Do you know if Justin Givens has entered an  
2 appearance in this case?

3 A. I do not know.

4 Q. Okay. Do you know if there were settlement discussions  
5 last Thursday morning between Mr. Duffy and Mr. Givens?

6 A. I do not know.

7 Q. When is the last time you talked to -- Jason and Justin,  
8 I'm getting them mixed up.

9 When is the last time you talked to Mr. Givens about this  
10 matter?

11 A. Maybe two hours ago, over lunch.

12 Q. Okay. But in that lunch conversation, he did not discuss  
13 his conversations with Mr. Duffy while he was at the airport  
14 last Thursday?

15 A. Not that I have any recollection of.

16 Q. Okay. Did anybody ever -- when I say "anybody," I mean  
17 anybody.

18 Did anybody ever communicate to you that you guys  
19 couldn't go pick up the trailer?

20 A. No one has communicated with me directly, other than the  
21 attorneys at my office, on this case.

22 Q. Okay.

23 MR. DAVIS: No further questions, Your Honor.

24 THE COURT: All right. Redirect?

25 MS. HINTZ: We don't have any further questions at



1 this time.

2 THE COURT: All right. You may step down.

3 (Witness excused).

4 THE COURT: And plaintiff may call its next witness.

5 MS. HINTZ: Your Honor, except for redirect or after  
6 the defendant has put on any witnesses they may might have, we  
7 reserve the right to --

8 THE COURT: Certainly. Rebuttal?

9 MS. HINTZ: -- have rebuttal witnesses.

10 THE COURT: Certainly.

11 MS. HINTZ: Thank you.

12 THE COURT: All right. For the defendant?

13 MR. DAVIS: Your Honor, I call Ryan Duffy.

14 THE COURT: Is there anyone that has testified so  
15 far that is not a lawyer?

16 MR. DAVIS: No, Your Honor.

17 THE COURT: All right. I just want to point out how  
18 bizarre that is, to only have lawyers testifying.

19 Go ahead.

20 (Witness duly sworn)

21 **RYAN DUFFY,**

22 after having been first duly sworn, testifies as follows:

23 **DIRECT EXAMINATION**

24 BY MR. DAVIS:

25 Q. Mr. Duffy, would you state your name and occupation for

1 the record?

2 A. Ryan Duffy. I'm an attorney with the Andrews Davis law  
3 firm.

4 Q. And are you familiar with the facts in this case and also  
5 in the facts in the -- what we're referring to as "the Judge  
6 Cauthron case"?

7 A. Painstakingly so.

8 Q. Okay. Do you respect anyone in this case, any defendant?

9 A. I do not represent any of the plaintiffs or defendants in  
10 this matter.

11 Q. Okay. Who do you represent in the Judge Cauthron case?

12 A. I represent the Gerold Wayne Interactive Zoological  
13 Foundation in the Judge Cauthron case.

14 Q. Mr. Duffy, how long have you been involved in either this  
15 matter -- well, you're not involved in this matter.

16 How long have you been involved in the Judge Cauthron  
17 matter?

18 A. Actually, I should correct for the record. I believe we  
19 had an entry in the old case -- this case through my old law  
20 firm, Stuart & Clover, but that has since been withdrawn.

21 My overall global activity in this case began in November  
22 of 2014.

23 Q. Do you know the defendant in this case, Joe Schreibvogel?

24 A. Yes, sir.

25 Q. Do you know the last time you talked with him?

1 A. He inquired yesterday on behalf of the park -- he is a  
2 contractor for the park -- as to what the status of the  
3 settlement negotiations were.

4 And I spoke with him today to confirm that he was,  
5 indeed, in Iowa and would be unable to attend today.

6 MR. DAVIS: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. (BY MR. DAVIS) Mr. Duffy, is it fair to state that you  
9 and I have had numerous conversations about this matter?

10 A. Yes.

11 Q. Okay. I have handed you what's been marked Defendant's  
12 Exhibit 1.

13 Can you identify that for the record?

14 A. That is an e-mail from myself dated July 10th, 2015, to  
15 Justin R. Givens with also Mel McVay and Heather Hintz in the  
16 "to" line and copying my fellow associate at Andrews Davis,  
17 Peter Scimeca, and yourself, Mr. John Davis.

18 Q. Does Mr. Scimeca -- he's your co-counsel in the Cauthron  
19 case?

20 A. Yes.

21 Q. Does he represent anyone in this case?

22 A. No.

23 Q. Okay. What is the general flavor -- what was the purpose  
24 of this e-mail?

25 A. Sure.

1       You and I had discussed the issue with the trailer, and I  
2 indicated that I think that this problem is that they're  
3 wanting the zoo to make sure that they disclaim any interest.

4       So I contacted Justin -- Mr. Givens via telephone to  
5 confirm that we don't have any interest in the trailer and  
6 that I would put him in contact with you via an e-mail to  
7 confirm that fact, and that they should take it forward from  
8 there with respect to the trailer in relation to the  
9 settlement negotiations as well.

10      Q.    Could you -- I believe Ms. Hintz testified that the  
11 settlement negotiations were confidential.

12       Is it -- were there ongoing settlement negotiations at  
13 this time to globally settle both lawsuits?

14      A.    Certainly.

15      Q.    Do you know when those settlement negotiations started,  
16 approximately?

17      A.    My recollection would be that they have been ongoing for  
18 sometime but were really began in earnest in -- late June  
19 would be about the same that they heated up.

20      Q.    Okay. You're familiar with Plaintiff's Exhibits -- it's  
21 document number 99. I don't know what Plaintiff's Exhibit it  
22 is, but it's the order to turn over possession of the trailer.

23       Are you familiar with that?

24      A.    Yes.

25      Q.    Okay. How long have you been familiar with that? It was

1 actually filed with the Court on June the 9th. How long have  
2 you been familiar?

3 A. It would have come into my inbox electronically. I  
4 always open those as soon as I get them. So provided I was in  
5 the office that day, I would have seen it on June 9th.

6 Q. Okay. Did you receive it --

7 MR. DAVIS: Your Honor, may I approach?

8 THE COURT: Sure.

9 Q. (BY MR. DAVIS) Document number 100, the certificate of  
10 service, which I believe is your --

11 THE COURT: It's the second page of the --

12 MR. DAVIS: It's the last page of the motion.

13 THE COURT: Of the motion, okay.

14 MR. DAVIS: Document number 100.

15 THE COURT: Document number 100, page 5.

16 Q. (BY MR. DAVIS) When you said you received it in your  
17 inbox, is it because you were on the certificate of mailing?

18 A. Yes.

19 Q. Okay. But you're not counsel --

20 A. Well, we are not a party to this matter, as in a  
21 first-term party. Forgive me for my failure to get the proper  
22 term here.

23 We are a garnishee of Mr. Schreibvogel, as someone making  
24 payments to him. I believe there is a garnishment order in  
25 this matter for us to pay any funds that we do to

1 Mr. Schreibvogel from my client, being the Gerold Wayne  
2 Interactive Zoological Foundation, over to the plaintiff.

3 THE COURT: I am handing your witness a copy of the  
4 document that I printed about an hour ago. You'll see just  
5 what capacity you're in the case, at least according to the  
6 docket.

7 MR. DAVIS: Thank you, Your Honor.

8 WITNESS: Yes. It shows that I am, in fact, as I'd  
9 stated, counsel for the garnishee. So not an actual defendant  
10 or plaintiff in this matter, but rather the garnishee, which I  
11 believe would be classified as a third party.

12 Q. (BY MR. DAVIS) So as counsel for garnishee of the  
13 defendant here, Mr. Schreibvogel, you received this on July  
14 the 10th? That's the date on the certificate of service.

15 A. Yes.

16 Q. On the same day, Defendant's Exhibit 1, your e-mail, went  
17 out, do you know which one of these you received first -- or  
18 which one of these happened first?

19 A. I received the docket for that document subsequent to my  
20 transmittal of this e-mail.

21 Q. Okay. But at the time you sent the e-mail, is it your  
22 testimony that there was ongoing settlement negotiations to  
23 globally settle everything?

24 A. Yes.

25 Q. Including the possession of this trailer?

1 A. Yes.

2 Q. Okay. Do you believe that the recipients of your e-mail  
3 -- Mr. Givens, Mr. McVay, and Ms. Hintz -- knew that this  
4 trailer was part of that global settlement?

5 A. It had --

6 MR. McVAY: Objection, Your Honor. Calls for  
7 speculation.

8 THE COURT: If you know.

9 WITNESS: I don't know their specific -- being  
10 Ms. Hintz's and Mr. McVay's specific mind set, but we had had  
11 discussions with Justin about, do we want to include minutiae  
12 in this settlement agreement or should we make a wide global  
13 offer that would settlement all claims?

14 It was determined that we would make a wide global offer  
15 rather than getting down to bits and pieces.

16 Q. (BY MR. DAVIS) Okay. So is it your testimony, your  
17 understanding, your belief, that at the same time you're  
18 sending an e-mail about a global settlement this came in to  
19 you as attorney for garnishee?

20 A. Yes.

21 Q. Regarding the subject matter of this motion for contempt?

22 A. Yes.

23 Q. Do you have any knowledge of any conversation that you  
24 would have had, either with your client or the garnish- -- Joe  
25 Schreibvogel, as to whether or not anybody was claiming an

1 interest in that trailer and whether or not they would just  
2 say "come and get it"?

3 A. The only conversations that -- I recall having a  
4 conversation with Mr. Givens at the zoo the day that we were  
5 having the computers copied where I said essentially, what do  
6 we need to do about this trailer?

7 He said, "I think that they're just trying to determine  
8 that the zoo doesn't have an interest, but I'll check with  
9 Heather."

10 I said, "Well, we don't have an interest. Joe says that  
11 you can come get it. Proceed and we'll take that up whenever  
12 you're ready."

13 Q. Okay. Was that before or after this e-mail, the time  
14 when you met with Attorney Givens at the zoo down by Davis or  
15 Sulphur?

16 A. By Wynnewood. But it would have been before this e-mail.

17 Q. I'm sorry. What?

18 A. It would have been before this e-mail.

19 Q. Prior to July 10th, prior to your e-mail and prior to  
20 this motion to hold the defendant in contempt, you conveyed --  
21 this is the question.

22 Did you convey to one of the attorneys at -- let me get  
23 my law firm correct -- Phillips Murrah that they could come  
24 and get the trailer?

25 A. My communication was to Mr. Givens, and I stated from



1 what I had been conveyed from Mr. Schreibvogel, the trailer is  
2 in Texas, it doesn't have a tag on it, and we don't think -- I  
3 don't think -- excuse me. Let me slow down.

4 It's my understanding that he is going to be unable to  
5 deliver it, but the zoo does not have an interest, and it  
6 would be able to be arranged for the plaintiff to pick up the  
7 trailer.

8 Q. For the plaintiff to pick it up?

9 A. Yes.

10 Q. Okay. Last -- when was your last communication with  
11 anyone at the Phillips Murrah firm about global settlement of  
12 this matter?

13 A. I spoke with Mr. Givens last Thursday when I was at the  
14 airport.

15 Q. How long was that conversation?

16 A. I would guess it was probably 15 minutes or so.

17 Q. Okay. So it was -- I understand the settlement may be  
18 confidential, but my question is, in that conversation did he  
19 communicate to you that you would be receiving a settlement  
20 proposal offer?

21 MR. McVAY: Objection. Hearsay.

22 THE COURT: Who's the speaker?

23 Q. (BY MR. DAVIS) Did you anticipate receiving a settlement  
24 offer?

25 THE COURT: There you go.

1           WITNESS: Whenever I spoke with Mr. Givens, I  
2 inquired as to were we to be expecting a settlement  
3 counteroffer. And the anticipation from that side that I  
4 gathered was, yes, there would be a counteroffer forthcoming.

5 Q. (BY MR. DAVIS) Have you received that counteroffer yet?

6 A. Not to date.

7 Q. Not since you left your office at 1:30?

8 A. Correct.

9 Q. I mean, not prior to that?

10 A. Yes.

11 Q. Okay. Did you have any discussion last Thursday about  
12 the trailer?

13 A. We did not. Last Thursday's discussion centered around  
14 settlement and who could accept service for certain  
15 individuals that would be related to my client.

16 Q. Okay. Is it your understanding that it was a global  
17 settlement discussion?

18 A. Yes. That's been our anticipation at least the whole  
19 time.

20 Q. So was the trailer in any way excluded in your mind or  
21 was it part of that global settlement as late as last  
22 Thursday?

23 A. It certainly was not excluded.

24 Q. Have you ever seen the trailer?

25 A. I have not, other than in pictures from the hearing on

1 assets.

2 MR. DAVIS: Okay. No further questions, Your Honor.

3 THE COURT: All right. Cross-examination by  
4 Mr. McVay.

5 MR. McVAY: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. McVAY:

8 Q. You are a lawyer, Mr. Duffy; correct?

9 A. Yes.

10 Q. Would you agree with me that in exercising due diligence,  
11 that Mr. Schreibvogel or his counsel should have filed a  
12 response to the motion for contempt that was filed by the  
13 plaintiff in this case explaining --

14 MR. DAVIS: Objection, Your Honor.

15 Q. (BY MR. McVAY) -- why Mr. Schreibvogel had not delivered  
16 the trailer?

17 THE COURT: Response to the objection.

18 MR. McVAY: It's a relevant question.

19 THE COURT: Well, I think you're --

20 MR. McVAY: He's a lawyer.

21 THE COURT: Well, I think you're asking him about  
22 his legal practice and what the standard of care is for  
23 lawyers. This isn't a malpractice case yet.

24 So how is that an appropriate question?

25 MR. McVAY: Well, I think, as the Court had noted,

1 that the amount of diligence that went into responding to the  
2 Court's order is relevant.

3 THE COURT: If you'll keep it close to the diligence  
4 issue, I'll allow it.

5 So objection overruled.

6 WITNESS: Could you restate the question for me,  
7 please?

8 MR. McVAY: Let me restate it.

9 Q. (BY MR. McVAY) In the exercise of diligence, do you  
10 believe that the plaintiff's motion for contempt should have  
11 been responded to by Mr. Schreibvogel?

12 A. That would be between he and his attorney to make a  
13 determination of.

14 Q. I'm asking you as an attorney.

15 A. I was not privy to their conversations.

16 Q. But as an attorney, do you believe that it would have  
17 been diligent, once a motion is filed with the Court -- and  
18 you understand there is a time frame for responding to that  
19 motion -- that in being diligent, that Mr. Schreibvogel should  
20 have responded to that motion in a timely fashion?

21 A. There's any number of facts and circumstances that could  
22 play into that determination.

23 Q. I'm not asking -- I'm not asking as to --

24 THE COURT: Let's move on. I think you've made your  
25 point.

1 MR. McVAY: All right.

2 Q. (BY MR. McVAY) Do you know of any reason why settlement  
3 negotiations would have relieved Mr. Schreibvogel of his  
4 obligation to turn over the trailer or to appear in this  
5 courtroom today?

6 A. I don't.

7 Q. You may have to refresh my recollection on when the  
8 settlement offer was made that Mr. Davis was talking about,  
9 the global settlement offer.

10 It was sometime in mid-June; is that correct?

11 A. I believe it may have been closer to late July, but I  
12 would need to look at the document myself.

13 Q. And Ms. Hintz testified that it was a fairly short time  
14 frame, a few days or maybe it was a week. But do you know  
15 when that offer terminated?

16 A. Fifteen days is sticking in my head. I could be  
17 incorrect about that, but 15 days is sticking in my head.

18 Q. But that offer terminated before today?

19 A. Yes.

20 Q. That offer is not pending?

21 A. Yes.

22 We had visited with Justin previously, and we thought  
23 that we were going to be -- we indicated that maybe it would  
24 still be on the table, that we'd hoped to get a counter.

25 Q. Okay. So there's no settlement negotiations pending

1 right now, or settlement offers pending right now?

2 A. There's no formal written settlement offer pending at  
3 this time, that's correct.

4 Q. You may have already testified to this as well, but  
5 during the course of these negotiations or the settlement  
6 offer itself, there's been no communication specifically about  
7 this Dane trailer; is that correct?

8 A. I would reiterate my previous testimony, that there was a  
9 determination made that we wouldn't address minutiae, that  
10 those could be outlined at a later time.

11 But, no, the trailer hasn't been specifically written  
12 down or considered as an intricate portion of the settlement.

13 THE COURT: I've got a question.

14 Has it been mentioned at all? Is it on a list of assets  
15 to be transferred, individually named?

16 WITNESS: Well, I would say that it's been  
17 mentioned, via this e-mail, that it's Joe's trailer, he's a  
18 defendant in this matter, and that we were going to try to  
19 settle the matter on behalf of all defendants in an effort to  
20 get this thing done with.

21 THE COURT: Okay.

22 MR. McVAY: That's all I have, Your Honor.

23 THE COURT: All right. Redirect?  
24  
25

**REDIRECT EXAMINATION**

BY MR. DAVIS:

Q. Mr. Duffy, as an officer of the court, is it your good faith belief that Mr. Givens knew, in all of your discussions, that Joe Schreibvogel was going to be released of any and all liability in this case, including this trailer issue, as part of your settlement negotiations?

MR. McVAY: Objection. Calls for speculation, Your Honor.

THE COURT: Overruled. I'll allow it.

Go ahead.

WITNESS: Absolutely.

Q. (BY MR. DAVIS) Were there -- I just want to be clear.

Was there a list of assets ever attached to a settlement agreement but this trailer was excluded from that list of assets?

A. There was no list of assets, period.

Q. No list of assets of any defendant in either case?

A. No.

MR. DAVIS: Okay.

Thank you, Your Honor.

THE COURT: Recross?

MR. McVAY: No, Your Honor.

THE COURT: All right. You may step down.

(Witness excused).

1 THE COURT: Any other witnesses for the Defendant  
2 Joe Exotic?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: Rebuttal witnesses from plaintiff?

5 MS. HINTZ: No, Your Honor.

6 THE COURT: All right. Closing then from plaintiff.

7 MR. DUFFY: Your Honor, if I may, being an officer  
8 of the court, I have another obligation at four o'clock. I  
9 don't think I'm integral to the closings unless anyone has an  
10 objection.

11 THE COURT: I think everybody -- is everyone  
12 finished with Mr. Duffy?

13 MR. McVAY: Yes, Your Honor.

14 MS. HINTZ: Yes.

15 THE COURT: All right. Remember this experience  
16 testifying and be kind to your clients.

17 (Mr. Duffy exits courtroom.)

18 THE COURT: All right. Then we're at closing from  
19 plaintiff.

20 MS. HINTZ: Thank you, Your Honor.

21 The case law provides that to establish a civil contempt  
22 the movant needs to establish that a valid order exists, the  
23 defendant had knowledge of the order, and that the defendant  
24 disobeyed -- was not reasonably energetic and diligent in  
25 complying with the order.



1 Here, we have a stipulation that a valid court order  
2 exists and that both defendant's counsel and defendant had  
3 knowledge of the order.

4 The order in question is the order granting plaintiff's  
5 motion for turnover of property.

6 This is a collection case in which Big Cat Rescue Corp,  
7 the plaintiff, is trying to collect on a \$953,000 judgment  
8 against the defendant, Mr. Schreibvogel. The order granting  
9 plaintiff's motion for turnover was issued pursuant to those  
10 efforts.

11 The order was issued on the 9th of June, and it required  
12 three things of Defendant Mr. Schreibvogel.

13 It required that, first of all, he obtain possession of  
14 the Great Dane trailer and deliver it to Big Cat Rescue within  
15 10 days of the date of this order.

16 It's not disputed that that did not occur. It would have  
17 had to occur by June 19th. It did not occur.

18 It was also ordered that Mr. Schreibvogel or his counsel  
19 should contact counsel for Big Cat Rescue within 5 days of the  
20 date of the order, which would be by June 14th, 2015, to  
21 arrange a time and location suitable to BCR and within the  
22 jurisdictional limits of the court for delivery of the trailer  
23 to BCR in accordance with the order.

24 It is not disputed that that did not occur. In fact,  
25 it's undisputed that there was no contact by defendant or his

1 counsel to plaintiff's counsel until sometime after June 19th,  
2 2015.

3 So not only was there -- there was no effort at all. It  
4 could not be -- the effort that was conducted could not be  
5 characterized as reasonably energetic, diligent, or anything  
6 else because there was absolutely no effort.

7 The only contact that occurred was initiated by  
8 plaintiff's counsel after the obligations of the time for  
9 defendant to comply with the order had passed.

10 When plaintiff's counsel reached out to defendant's  
11 counsel to try to get some movement, have some discussions  
12 about obtaining the trailer, there was no response.

13 Mr. Kreth and I both testified that although we received  
14 absolutely no response, no contact from plaintiff -- from  
15 defendant by June 19th, after June 19th we reached out to  
16 defendant's counsel trying to initiate discussions.

17 We were asked to call back on June 29th and did recontact  
18 defendant's counsel, and there was absolutely no further  
19 contact made.

20 There was -- in essence, the only contact between  
21 Mr. Schreibvogel's counsel and plaintiff's counsel, pursuant  
22 to this order, was the request on June 24th that we recontact  
23 him on June 29th.

24 The e-mail that the Gerold Wayne Interactive Zoological  
25 Foundation's lawyer sent on June 10th was not in compliance

1 with the order. First of all, they don't represent the  
2 defendant and -- Mr. Schreibvogel. They represent the Gerold  
3 Wayne Interactive Zoological Foundation.

4 That e-mail did not -- it simply disclaimed the interest  
5 of the zoo in the trailer and then cc'd Mr. Davis that he  
6 should follow up with plaintiff's counsel. No follow-up was  
7 ever undertaken by defendant's counsel.

8 There has been some statements made today regarding that  
9 the trailer couldn't be moved or isn't tagged. There's  
10 absolutely no evidence in that regard. The only person with  
11 that knowledge of that presumably would be Mr. Schreibvogel,  
12 who owns the trailer. He was ordered to appear today but  
13 didn't appear.

14 So there's no -- in any event, that -- discussions of  
15 those kinds were not had during the time frames contemplated  
16 by the order. There was no objection to the motion for  
17 turnover, that there would be some impossibility.

18 There was no objection or motion to quash filed with  
19 respect to either the motion for contempt or the order setting  
20 this hearing, the show cause hearing. So absolutely nothing  
21 on the record.

22 The record is completely devoid of any defense, response,  
23 objection of any nature regarding either the turnover or the  
24 show cause hearing, why the defendant should not be held in  
25 contempt.

1 And that is, unfortunately, consistent with the testimony  
2 that there was similar silence with regard to the double  
3 requirements put on the defendant in the order of contacting  
4 plaintiff's counsel to arrange delivery and obtaining  
5 possession and delivering. There was absolutely no  
6 communication within the time frame set out in the order of  
7 the court.

8 Consequently, we believe the Court has been presented  
9 with sufficient evidence of civil contempt; clear and  
10 convincing evidence, in fact. There's absolutely no evidence  
11 that there was compliance with the Court's order.

12 And we would request that the matter be certified to  
13 Judge Friot as there being sufficient cause to find the  
14 defendant in contempt of the Court's order for turnover of the  
15 property. And we would request an award of our fees and costs  
16 in pursuing this contempt motion, and that there be a finding  
17 of contempt, and that the Court would order the defendant to  
18 deliver the trailer to the plaintiff within 10 days of the  
19 finding -- of today's date or the finding of contempt at a  
20 place convenient and acceptable to plaintiff.

21 And if the defendant should fail to comply, that he be  
22 assessed a fine that would go to the benefit of plaintiff in  
23 the average value of this sort of trailer, which we believe  
24 would be \$10,000, and would be imprisoned for 30 days under  
25 the Court's contempt power, which he could purge by complying

1 with the terms of the Court's turnover order.

2 I don't have anything further.

3 THE COURT: All right. Closing from the defendant,  
4 Mr. Davis.

5 MR. DAVIS: Your Honor, we will absolutely stipulate  
6 that the order is there and was properly delivered.

7 We vehemently refute that the defendant, whether through  
8 Mr. Duffy, whether through myself or through any other  
9 mechanism, did not adequately reasonably diligently  
10 communicate that they can go get the trailer anytime they  
11 want.

12 They've got a \$953,000 judgment. There's a separate  
13 lawsuit involving similar assets and similar things.

14 The defendant here is currently an employee of the  
15 defendant in the other -- in the Judge Cauthron case. He has,  
16 as early as the hearing on assets that was conducted on March  
17 6th, gave them a picture of the trailer, told them where the  
18 trailer was, and told them they could go get it.

19 We would disagree about the value. It's not worth  
20 10,000, but let's assume it's worth 5-.

21 THE COURT: Let me clarify something or help clarify  
22 something for you, Mr. Davis.

23 We've got -- the Great Dane trailer was identified by  
24 Mr. Schreibvogel in his -- under oath, I suppose, hearing on  
25 assets as being his personal asset that was owned free and

1 clear of any liens or encumbrances?

2 MR. DAVIS: If I remember the testimony, he did  
3 identify it as something that belonged to him that was titled  
4 to his name.

5 THE COURT: Okay.

6 MR. DAVIS: It was always used by the other  
7 defendant in this lawsuit, okay, but it was titled in his  
8 name.

9 THE COURT: Okay. Thank you.

10 MR. DAVIS: We don't dispute the judgment and we  
11 don't dispute how it was titled, okay.

12 As early as March 6th they were informed they could go  
13 get the trailer and it didn't have a tag on it.

14 As late as last Thursday, July 29th, in the companion  
15 case, you've got testimony that they're still talking  
16 settlement negotiations, which would include this trailer.

17 My client has in no way thumbed his nose to this Court or  
18 to the plaintiffs, but in all situations said "go get the  
19 trailer."

20 He does not have the money to tag it. He does not have  
21 the money to transport it. They can have it, where is, as is,  
22 where it is, in Kaufman, Texas.

23 They know where the trailer is. It's never tried to be  
24 hidden. It's been part of a global settlement agreement.

25 In my opinion, this whole thing is just to harass, to get

1 an advantage in the Judge Cauthron lawsuit. I don't see any  
2 reason for contempt here. They know where the trailer is, and  
3 they can go get it.

4 Now, if he needs to sign a title or a certificate for a  
5 lost title, he will do that. I'll stipulate that he'll do it,  
6 but this is not an issue where someone should be punished or  
7 go to jail because they're not turning something over or  
8 they're in violation of a court order.

9 This law firm has no less than four lawyers involved in  
10 the two matters. I don't know what communication they do  
11 internally, but as of last Thursday they're still talking  
12 settlement in the other lawsuit, which involves this trailer  
13 and this defendant.

14 Your Honor, I would just ask for equity to be done and  
15 this gentleman be left to just go do his own business, and  
16 they go get the trailer.

17 THE COURT: One more question.

18 Is -- if you know, is the trailer moveable? Does it  
19 still have wheels that roll?

20 MR. DAVIS: Based upon the picture dated in March of  
21 2011, four years before the hearing on assets, it was very  
22 moveable.

23 I don't know if the tires are flat. I don't know the  
24 condition of it. The only person who would really know the  
25 condition of the trailer -- I don't remember his name, but he

1 is the gentleman in Iowa with my client.

2 THE COURT: The tiger guy, Taranova?

3 MR. DAVIS: Yes, yes. He would know the condition  
4 of the trailer. It is at his location.

5 THE COURT: Okay. Thank you.

6 MR. DAVIS: I will say this: We will fully  
7 cooperate with them going and getting the trailer anytime they  
8 want to go get it, and the title. But we don't have the money  
9 to pay for anything to transport it.

10 THE COURT: All right.

11 MR. DAVIS: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 And rebuttal from the plaintiff?

14 MS. HINTZ: Your Honor, the plaintiff would like to  
15 print out the -- there is no evidence in the record that the  
16 plaintiff was told to go pick the trailer up.

17 The -- I have the transcript of the hearing on assets.  
18 The Court -- Mr. Davis characterized some testimony a moment  
19 ago that that offer was made to pick the trailer up at the  
20 hearing on assets.

21 That's not in the record. In fact, it didn't occur.  
22 There's never been an offer made to pick the trailer up.

23 In any event, the order that we're addressing here today,  
24 which is the order for turnover, directs the defendant to  
25 contact the plaintiff and make arrangements to deliver it and



1 -- to obtain possession and, in fact, deliver it by June 19th.

2 The discussions and offers that Mr. Davis is  
3 characterizing in his closing statement, the evidence shows  
4 those didn't occur.

5 The Court's order was issued on June 9th. None of the  
6 "come get the trailer, it's yours, we have no objection," none  
7 of those -- there was absolutely no communication during the  
8 term required by the Court's order.

9 Today, here before the Court, that characterization is  
10 being made, but the evidence before the Court today from the  
11 testimony is that there was absolutely no communication  
12 regarding picking up the trailer, delivering the trailer,  
13 making arrangements.

14 Plaintiff's counsel tried to initiate those kind of  
15 discussions with the defendant's counsel, but they did not  
16 occur.

17 So to belatedly, on the date that the only person who  
18 knows the condition of the trailer should have been here and  
19 wasn't here, the condition of the trailer isn't properly in  
20 the record because Mr. Schreibvogel didn't appear.

21 And the plaintiff would just point out again that none of  
22 the characterizations of trying to deliver the trailer to the  
23 plaintiff that defendant's counsel is making right now  
24 occurred, ever, during the pendency of the obligations that  
25 were imposed by the Court's order.

1        So in the equity in the situation, to the extent equities  
2 are to be considered, is that the defendant had -- the  
3 plaintiff had to go to the trouble of filing the motion and  
4 obtaining the order.

5        And when the order wasn't complied with for the \$5- to  
6 \$15,000 trailer to be applied to its \$973,000 judgment, then  
7 filed the motion for contempt, and nothing was ever filed of  
8 record, and no communications were ever had with us.

9        So the equities are on the side of the plaintiff in this  
10 case to the extent that that has to be considered. Thank you.

11        THE COURT: All right. Counsel, I've got a lot to  
12 say, but I'm going to say it in writing. I believe that's the  
13 way -- that's Judge Friot's preference is that I prepare a  
14 report and recommendation.

15        It will depend on when I can get the record. Not to put  
16 any -- my understanding is you can request an expedited  
17 record. If you request an expedited record, then --  
18 Ms. Grubbs, when will we get the record?

19        (Discussion held off the record.)

20        THE COURT: Here is the problem with requesting an  
21 expedited record. You'll have to pay for it. I don't know  
22 whether you want to do that or not.

23        If you don't request an expedited record, then I should  
24 have the record in my hands in 14 days. So you'd probably  
25 have my R&R within 30 days of today. So it's going to be a

1 while.

2 Now, if you want to request -- to save yourself a couple  
3 of weeks, request an expedited record and pay for it, then you  
4 can cut it by two weeks. Once I have the record in my hand, I  
5 just need about 10 days to finalize an R&R.

6 MS. HINTZ: Your Honor, we would like to request an  
7 expedited record of the court reporter.

8 THE COURT: Okay. So once I get that record, give  
9 me about 10 days to finish it.

10 Once you get -- in your e-mail box, once you get a copy  
11 of my report and recommendation, you've got 14 days -- this  
12 will be in the R&R. You've got 14 days to file your objection  
13 to the R&R. So that's what will happen over the next few  
14 weeks.

15 Any questions about the process?

16 MS. HINTZ: Not on our side.

17 THE COURT: I really enjoyed seeing so many lawyers  
18 testify.

19 MS. HINTZ: I wish we could say the feeling was the  
20 same on our side.

21 THE COURT: Now you know how uncomfortable your  
22 clients feel.

23 All right. Nothing further from plaintiff?

24 MR. McVAY: No, Your Honor.

25 THE COURT: Mr. Davis, from the defendant?

1 MR. DAVIS: No, Your Honor.

2 THE COURT: All right. You're excused and we're  
3 adjourned.

4 (Proceedings adjourned at 3:57 p.m.)  
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## 1 REPORTER'S CERTIFICATE

2  
3 I, SHERRI GRUBBS, Federal Official Court Reporter in  
4 and for the United States District Court for the Western  
5 District of Oklahoma, do hereby certify that pursuant to  
6 Section 753, Title 28, United States Code that the foregoing  
7 is a true and correct transcript of the stenographically  
8 reported proceedings held in the above-entitled matter and  
9 that the transcript page format is in conformance with the  
10 regulations of the Judicial Conference of the United States.  
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12 Dated this 8th day of August, 2015.  
13

14 /S/ SHERRI GRUBBS

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